

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: COMPLAINT OF US LEC OF)
TENNESSEE, INC. AGAINST ELECTRIC)
POWER BOARD OF CHATTANOOGA)

DOCKET NO. 02-00562

02 SEP 27 PM 4 18

TN REGULATORY AUTHORITY
DOCKET ROOM

MOTION TO COMPEL OF US LEC OF TENNESSEE, INC.

US LEC of Tennessee, Inc. ("US LEC") requests that the Hearing Officer order EPB to respond to the following requests for discovery.

US LEC Request No. 1. Provide copies of all documents, (specifically including but not limited to any business plans, cost analysis, and/or market analysis) concerning EPB's decision to enter the telecommunications business, and to form EPB Telecommunications.

Response of EPB: Objection. This Request is overly broad and unduly burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Reason to Compel Response: The purpose of this question is to determine whether when EPB decided to create EPB Telecommunications, EPB anticipated that it could cross-market the two entities and that the Telecommunications Division could benefit, directly or indirectly, from being associated with EPB. According to news reports (copies of which are attached to US LEC's discovery response), the "Electric Power Board" changed its name to "EPB" so that it could jointly market electric and telephone services under a common umbrella. Responses to this question should shed light on that marketing scheme which, as US LEC has previously noted, is expressly prohibited by the terms of EPB Telecommunications' certificate from the TRA.

US LEC Request No. 3. Please describe EPB Telecommunications relationship to the other divisions of EPB, including, but not limited to, allocation of company expenses, use of facilities, use of personnel division of overhead and use of company owned property (such as vehicles, maintenance equipment, etc.)

Response of EPB: The Second Revised Proposed Conditions filed in Docket No.97-07488 describes and defines the relationship between EPB Telecommunications and EPB.

Reason to Compel Response: This response is incomplete. The "Proposed Conditions" filed in Docket 97-07488 describe, in part, how the relationship between EPB and EPB Telecommunications is supposed to work in theory. It does not describe how it actually works in practice. Moreover, the "Proposed Conditions" do not address all of the sub-parts of this question. For example, it does not address what policies EPB has adopted concerning the allocation of expenses, facilities, and personnel. Furthermore, as revealed in the Internal Audits provided by EPB, those allocations have been changed, from time to time, notwithstanding the fact that the "Proposed Conditions" have not changed.

US LEC Request No. 17. Does EPB provide other CLECs the right to use its poles, rights of way, conduits, building entrance facilities, easements or any other instrumentalities or devices of EPB to run telecommunication lines? If so, please describe such use and the corresponding charges to the CLECs.

Response of EPB: Yes. Pursuant to Rule 33.03 of the Tennessee Rules of Civil Procedure, EPB will make available for inspection and copying its pole attachment and other facility use agreements with competitive local exchange carriers upon reasonable notice arranged in advance through EPB's counsel.

Reason to Compel Response: This answer is incomplete. Based on affidavits submitted in this proceeding by EPB, US LEC understands that no CLEC, other than EPB

Telecommunications, is using the EPB's building access facilities. If, in fact, the use of those facilities is available to other CLECs, what are "the corresponding charges to the CLECs" for the use of those facilities?

US LEC Request No. 19. Describe in detail EPB's or EPB Telecommunications relationship with MetroNet or any MetroNet related entity, specifically including whether there is any common ownership, employment. Also provide copies of any contracts evidencing a business relationship between EPB, EPB Telecommunications and MetroNet and/or related entities.

Response of EPB: Objection. This Request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Reason to Compel Response: Based on news articles (which were attached to US LEC's responses to discovery) MetroNet is part of EPB and intends to offer, among other things, high speed data transmission services to end users in Chattanooga. Such offerings constitute telecommunications services and, by state law, may only be offered by EPB Telecommunications. The purpose of this question is to learn more about MetroNet and its relationship to EPB and EPB Telecommunications.

US LEC Request No. 21. Has EPB allowed EPB Telecommunications to run telecommunications lines into the buildings of EPB's existing customers without seeking approval or obtaining an easement or right of way from the building owner? If so, please identify each instance where such has occurred, the identity of the customer and the corresponding charge to EPB Telecommunications.

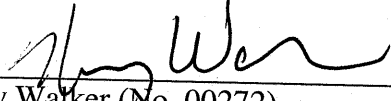
Response of EPB: No, EPB Telecommunications has obtained building access agreements with the building owners to obtain their approvals for EPB Telecommunications' access to these buildings.

Reason to Compel Response: This response is incomplete. In cases where EPB Telecommunications has obtained a building access agreement with a building owner, US LEC has asked what is the "corresponding charge to EPB Telecommunications" for that access?

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

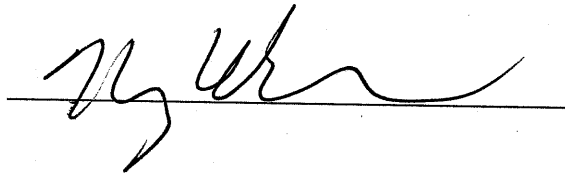

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 27th day of September, 2002.

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A handwritten signature in dark ink, appearing to read "Guy Hicks", is written over a horizontal line.